

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

**LANDMARK LEGAL FOUNDATION**

**Plaintiff,**

**vs.**

**ENVIRONMENTAL PROTECTION  
AGENCY**

**Defendant.**

**Civ. Act. No. 12-1276 (RCL)**

**DEFENDANT'S MOTION FOR AN EXTENSION OF TIME TO FILE MOTION FOR  
SUMMARY JUDGMENT AND TO AMEND SCHEDULING ORDER ACCORDINGLY**

Defendant requests an extension of time until May 15, 2013, to file their Motion for Summary Judgment now due on March 30, 2013. Defendant has conferred with counsel for Plaintiff as required by Local Civil Rule 7(m) and they oppose this motion. Plaintiff will only agree to an extension of up to April 12, 2013. Defendant needs more time for the reasons set forth below.

This action was filed under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and involves records related to communications EPA officials had with outside third parties pertaining to proposed rules or regulations that had not been finalized by the EPA between January 1, 2012 and August 17, 2012. Complaint at ¶10. The scope of the request has been limited to the responsive records of senior officials in EPA headquarters.

On February 19, 2013, the Court ordered *inter alia* that: (1) after final production, within twenty (20) days, Plaintiff and Defendant will meet and confer by telephone or otherwise to discuss the exemptions claimed and (2) if the parties cannot agree on the withholdings, Defendant will file a dispositive motion on or before March 30, 2013. Plaintiff will file its

response within twenty (20) days of service of Defendant's dispositive motion. Defendant will file its reply within twenty (20) days of service of Plaintiff's response.

Defendant has responded to the Plaintiff's FOIA request and produced disclosable documents in several CDs. Moreover, in accordance with this Court's Order, Defendant has also produced (1) a list of all documents withheld in their entirety with the applicable exemption justifying why the document was withheld and (2) with respect to partial withholdings, the applicable exemption was placed on or next to the actual redaction on the redacted document itself. The majority of the final production was made on February 27, 2013, except for one document that was inadvertently left out of the production and had to be sent to the Executive Offices of the White house prior to release.

The parties are currently in the meet-and-confer process in an attempt to narrow the scope of the brief and/or the Vaughn index. The Defendant needs additional clarification as to the scope of its briefing. Plaintiff has made an initial inquiry about the Defendant's production. The Defendant has responded to that inquiry. The Plaintiff has indicated that an additional inquiry may be forthcoming about the Defendant's production. Thus, in order to attempt to resolve or respond these inquiries, Defendant is requesting further time.

In addition, Landmark has requested that all of the attachments to Document-EPA-32 be produced and EPA has agreed produce the attachments on or before Friday, April 12, 2013. That will be an additional approximately 460 pages. It is reasonable therefore for additional time to be built into the schedule to brief any remaining issues after the production is complete.

Also, the EPA Office of the Administrator is currently involved in multiple cases in litigation and will not be able to provide the necessary declarations by the March deadline. Moreover, the Agency's budget situation means that no overtime work will be approved to meet deadlines.

The additional time is not only necessary for the reasons stated above and to make sure that all of the withheld information has been described and is appropriately designated pursuant to the claimed

Exemptions but also because of the undersigned counsel's travel and litigation responsibilities on other cases.

A representative, non-exclusive sample of those responsibilities in the recent past and coming weeks include, but are not limited to: Reply brief due on April 1, 2013 in Stepney v. DOL, Civ. Act. No. 11-1480 (RWR); preparing witnesses for deposition, defending and taking multiple depositions in Rhodes v. USA, Civ. Act. No. 12-0449 (ABJ) beginning April 8, 2013 through April 17, 2013, in addition to travelling to Florida for depositions; motions *in Limines* due in Rhodes on April 19, 2013; preparing for a mediation conference in Sledge v. U.S. Bureau of Prisons, Civ. Act. No. 10-0742 (KWT), the last week of April; preparing answers to written discovery and taking depositions in Burton v. HUD, Civ Act. No. 12-1537 (GK); and on-going settlement negotiations in Parker v. BBG, Civ. Act. No. 10-0479 (ABJ).

For the reasons cited above, Defendants request that their Motion for extension of time be granted. A proposed Order is attached hereto and incorporated herein.

Respectfully submitted,

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/s/

By:

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**ORDER**

Upon full consideration of the Motion, it is ORDERED that:

The Motion for an Extension of time to file Defendant's Motion for Summary Judgment is hereby GRANTED. The Parties shall abide by the following schedule:

Defendant's Motion for Summary Judgment . . . . . May 15, 2013

SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Royce C. Lamberth  
United States District Judge